

**UNITED STATES U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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Richard Whitley, et al.,	:	
	:	INDEX NO. 12-cv-2548
Plaintiffs,	:	
	:	
-against-	:	
	:	
J.P. Morgan Chase & Co., et al.,	:	
	:	
Defendants.	:	
	:	
-----	X	

**NOTICE OF SUPPLEMENTAL AUTHORITY REGARDING CONFIDENTIAL  
WITNESS ALLEGATIONS**

Defendants submit this Notice in support of their motion to dismiss the First Amended Complaint (the “Complaint”). Plaintiffs’ Complaint relies on a “Confidential Witness” for a number of its allegations. (Dkt. 47 at ¶¶ 59, 65, 80-81.) Defendants argued in their motion to dismiss briefing that these allegations are not sufficient to state claims. (Dkt. 50 at 11-12; Dkt. 59 at 6.) The purpose of this notice is to advise the Court that it no longer needs to consider these arguments because Plaintiffs have withdrawn their reliance on the Confidential Witness.

The parties exchanged Rule 26(a)(1) disclosures on January 22, 2013. Because Plaintiffs did not identify the “Confidential Witness” in their disclosures, Defendants requested that they do so unless “Plaintiffs have come to the conclusion that the ‘Confidential Witness’ does not have information they may use to support their claims.” (Hayne Decl. Ex. A at ¶ 3.) Plaintiffs responded explaining that “we do not anticipate calling the confidential witness referenced in the amended complaint as a trial witness.” (*Id.* at ¶ 4) Because Plaintiffs have stated that they are not relying on testimony of the Confidential Witness, the Court need not consider allegations concerning the Confidential Witness’s knowledge in determining whether the Complaint states a

claim. *See Campo v. Sears Holdings Corp.*, 371 Fed. Appx. 212, 216 n.4 (2d Cir. 2010) (district court did not err in considering deposition of confidential witness on motion to dismiss to determine “whether the confidential witnesses acknowledged the statements attributed to them in the complaint.”).

Dated: New York, New York

MORGAN, LEWIS & BOCKIUS LLP

February 25, 2013

By: s/ Melissa D. Hill

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 25, 2013, a true and correct copy of Defendant's foregoing Notice of Supplemental Authority Regarding Confidential Witness Allegations together with the Declaration of Azeez Hayne and Exhibit 1 thereto were filed electronically and are available for viewing and downloading from the ECF system of the U.S. District Court for the District of Columbia, and that I served the same via electronic filing on February 25, 2013 upon the following:

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